

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Deployment of Wireline Services Offering) **CC Docket No. 98-147**
Advanced Telecommunications Capability)

To: The Commission

**COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP**

RURAL TELECOMMUNICATIONS GROUP

Caressa D. Bennet
Gregory W. Whiteaker

Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
(202) 530-9800

Dated: September 25, 1998

TABLE OF CONTENTS

SUMMARY	ii
I. STATEMENT OF INTEREST	2
II. DISCUSSION	3
A. The Outcome of This Proceeding May Negatively Impact Both Wireline and Wireless Deployment of Advanced Services to Rural Areas.	3
1. As Capabilities and Services Converge, The Distinction Between Wireline and Wireless Clouds.....	4
2. The Commission’s Proposal May Subject Wireless Facilities To Unintended Regulation Thereby Deterring Investment in Advanced Capabilities.....	4
3. Rural Providers Should Have Maximum Flexibility In Deploying Advanced Services and Capabilities.	6
4. This Proceeding Sets the Wrong Course for The Continued Deployment of Wireline and Wireless Advanced Services.....	6
B. The NPRM’s Separate Affiliate “Alternative” is No “Alternative” for Rural Telephone Companies.....	7
III. CONCLUSION.....	9

SUMMARY

Although this proceeding purportedly affects only the provision of advanced services by incumbent local exchange carriers (“ILECs”) using *wireline* technologies, with the convergence of wireline and wireless technologies and services, and the overlap in ownership of wireline and wireless carriers, the outcome of this proceeding may in fact impact the deployment of advanced services using *wireless* as well as wireline technologies. As the telecommunications industry increasingly provides “advanced services” the distinction between wireline and wireless services may become problematic. This is particularly true in rural areas where, because of the difficulties in providing service, rural telephone companies provide a combination of wireline and wireless services. For example, many rural telephone companies are also Local Multipoint Distribution Services (“LMDS”) licensees, and they intend to provide advanced services using LMDS.

Because of the tremendous difficulties in providing *any* telecommunications service to rural areas, rural telephone companies should have maximum flexibility in deploying the best technological solutions -- wireline, wireless, or a combination -- to provide advanced services. Unfortunately, the overall impact of the Commission’s decision and proposed rules in this proceeding will be to limit flexibility and to discourage deployment of both wireline and wireless facilities in rural areas. It will be almost impossible for rural telephone companies and their affiliates to meet the proposed structural separation requirements. Accordingly, the Commission’s proposal, that an ILEC may provide advanced services free from the obligations of § 251(c) if the ILEC provides service through a structurally separate affiliate, provides no encouragement for rural telephone companies to invest in systems capable of providing advanced services.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

To: The Commission

**COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these comments in response to the *Notice of Proposed Rulemaking* ("*Notice*" or "*NPRM*") in the above-captioned proceeding. Although the rules proposed in this proceeding purportedly affect only the provision of advanced services by an incumbent local exchange carrier ("ILEC") using *wireline* technologies, with the convergence of wireline and wireless technologies and services, and the overlap in ownership of wireline and wireless carriers, the outcome of this proceeding will impact the deployment of advanced services using *wireless* as well as wireline technologies. This proceeding also plots the course for possible future regulation of advanced services using wireless technologies. Unfortunately, the overall impact of the Commission's decision in the *Memorandum Opinion and Order* ("*MO&O*") accompanying the *NPRM* and the proposals in the *NPRM* will chill the rural deployment of both wireline and wireless advanced services contrary to the directive of Section 706 of the Telecommunications Act of 1996 ("1996 Act"). Rural telephone companies will be discouraged from investing in either wireline or wireless facilities capable of providing advanced services. Accordingly, RTG cautions the Commission to

consider the broader implications of its decision and proposed rules and to encourage rather than discourage the deployment of advanced services to rural areas.

I. STATEMENT OF INTEREST

RTG is a group of rural wireless telecommunications providers who have joined together to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved sections of the country. Many of these services are advanced telecommunications services pursuant to Section 706. RTG's members provide wireless telecommunications services such as cellular telephone service, Personal Communications Service ("PCS"), and Multichannel Multipoint Distribution Service ("MMDS") to their subscribers. Many of RTG's members also hold LMDS licenses and intend to use LMDS to introduce advanced telecommunications capabilities and services, as well as competition in the local exchange and video distribution markets, in rural areas. One of RTG's members also holds Wireless Communications Services ("WCS") licenses and intends to use WCS to provide advanced telecommunications capabilities and services in rural parts of Texas.

In addition to being wireless providers, all of RTG's members are either rural telephone companies or affiliates of rural telephone companies. Many of these member-companies currently provide or are preparing to provide the kinds of advanced services contemplated by the *NPRM*. These advanced services include Internet access and a variety of digital technologies, including Digital Subscriber Line ("xDSL"), Integrated Services Digital Network ("ISDN"), Asynchronous Transfer Mode ("ATM"), and frame relay. Accordingly, RTG's members have a vested interest in the outcome of this proceeding.

II. DISCUSSION

A. **The Outcome of This Proceeding May Negatively Impact Both Wireline and Wireless Deployment of Advanced Services to Rural Areas.**

In the *MO&O*, the Commission determined that facilities and equipment of an ILEC used to provide advanced services are network elements subject to the obligations of Section 251(c) of the Communications Act of 1934, as amended (“the Act”) including the obligation to unbundle such network elements.¹ In the *NPRM*, among other things, the Commission seeks comment on the specific implementation of the Section 251(c) requirements to facilities used to provide advanced and services² and proposes certain conditions under which an ILEC could offer advanced services without being subject to Section 251(c).

The Commission ostensibly limits the scope of the *MO&O* and *NPRM* to the provision of advanced services using wireline technologies.³ In reality, because of the convergence of technologies, the decision in this proceeding could negatively impact both the provision of wireline and wireless services in rural areas. Moreover, aside from any direct impact, the

¹ *MO&O* ¶ 18, 57.

² *See, e.g., Id.* ¶ 58.

³ *Id.* ¶ 3 (for purposes of this item, “advanced services” defined as “wireline, broadband telecommunications services”) (footnote omitted); *Id.* n. 11 (“[W]e limit the discussion here to wireline services, because none of the petitioners raise issues about these other [satellite, cable and wireless] technologies.”).

direction that the Commission sets in this proceeding may ultimately affect the Commission's treatment of advanced services using wireless technologies.

1. As Capabilities and Services Converge, The Distinction Between Wireline and Wireless Clouds.

Although the Commission limits its discussion to the deployment of advanced services using wireline technologies, this demarcation may be illusory. The wireline/wireless distinction was easy to make and maintain in the days of simple "BEEP" paging and crackling calls over analog cellular systems. As the telecommunications industry moves toward the provision of "advanced services," however, the impending convergence of wireline and wireless capabilities and services and the common ownership of wireless and wireline systems makes this distinction more problematic. This is particularly true in high-bandwidth services such as LMDS. These wireless services can be used to provide advanced services, such as high-speed Internet access,⁴ on par with or exceeding wireline services. To the public, the provision of high-speed Internet access using LMDS or digital subscriber line ("xDSL") technology will be indistinguishable.

This distinction between wireline and wireless advanced services will also become blurred as more companies offer both wireline (perhaps as a competitive local exchange carrier ("CLEC")) and wireless services. This overlap is particularly prevalent in rural areas where, because of the cost and difficulty in providing service, many rural telephone companies provide a combination of wireline and wireless services.

⁴ RTG recognizes that there are many types of advanced services, but for the purposes of discussion finds it useful to focus on the illustrative example of high-speed Internet access rather than discussing a long list of advanced services.

2. *The Commission's Proposal May Subject Wireless Facilities To Unintended Regulation, Thereby Deterring Investment in Advanced Capabilities.*

Many of RTG's members, either directly or through an affiliate, are LMDS licensees who plan to offer high-speed Internet access, wireless local loop and data services, and other advanced services using LMDS technology.⁵ In order to provide high-speed Internet access and other advanced services, such rural telephone company/LMDS companies will need to deploy various facilities and equipment, such as packet switching facilities, necessary to provide the advanced service. Much of this equipment may be capable of supporting both wireless and wireline advanced services. An LMDS provider, for example, may deploy digital multiplexers, fiber (*e.g.*, to connect hubs) and other equipment that could also be used to support the provision of wireline advanced services.

Query: would such wireless advanced services facilities, or elements of such facilities, become subject to Section 251(c) if the LMDS licensee providing such services is also a rural telephone company (or a "non-structurally separate" affiliate) and the rural telephone company provides xDSL to a single subscriber using elements of the advanced services network? Pursuant to the *MO&O* and *NPRM*, the apparent answer is, "Yes." Unfortunately, such a result will either: (1) cause the rural telephone company not to provide xDSL to the small number of customers that would be interested in subscribing to such service; or, (2) deter the rural telephone company from investing in a network to support advanced services using LMDS. Both of these results are

⁵ Because of the small size of their telephone service areas, some rural telephone companies are not subject to the Commission's LMDS in-region eligibility restriction, 47 C.F.R. § 101.1003(a), and accordingly, may hold A Block LMDS licenses overlapping their telephone service areas.

clearly contrary to the mandate of Section 706 of the 1996 Act that the Commission encourage the deployment of advanced services to rural areas.⁶

3. *Rural Providers Should Have Maximum Flexibility In Deploying Advanced Services and Capabilities.*

Because of the tremendous difficulties in providing *any* telecommunication service to rural areas, rural providers should be encouraged to choose the best technological solution -- whether that be wireless, wireline or a combination of the two -- to provide advanced service to remote rural areas. Rural companies should be able to use hybrid solutions without fear that their investment in wireless advanced facilities will become subject to appropriation by competitors. Instead of providing encouragement to deploy advanced services to rural areas, by broadly sweeping facilities used to provide "advanced services" within the scope of Section 251(c), the Commission chills not only the deployment of wireline services, but also wireless services as well.

4. *This Proceeding Sets the Wrong Course for The Continued Deployment of Wireline and Wireless Advanced Services.*

⁶ In theory, the FCC's current regulatory proposal would "encourage" a rural telephone company to deploy two advanced networks, one that would be subject to Section 251(c) to support wireline advanced services, and a second, to support wireless advanced services. From a practical standpoint, this result is utterly ridiculous. Substantial financial and technical hurdles stand in the way of the deployment of advanced services in rural areas. Rural companies certainly do not have the ability to deploy redundant, parallel facilities.

As explained above, although this proceeding purportedly affects only wireline services, in reality, it may chill the deployment of advanced services to rural areas by discouraging rural telephone companies from investing in either wireline or wireless facilities capable of providing advanced services. Of even greater concern, this proceeding raises the specter that the facilities of a rural telephone company used exclusively to provide advanced services using *wireless* technologies, could be subjected to the requirements of Section 251(c), or that the facilities of a wireless affiliate of a rural telephone company (*e.g.*, an LMDS affiliate) could be subject to 251(c) if the wireless affiliate does not meet the rigid structural separations requirements proposed in the *NPRM*. RTG vigorously opposes any move in this direction and cautions the Commission to carefully consider the broader implications of its decision in this proceeding.

As RTG discussed above, wireless and wireline technologies are converging. By broadly defining advanced services as “*broadband telecommunications services* such as those that rely on digital subscriber line technology (commonly referred to as xDSL) and packet-switched-technology,”⁷ the Commission casts a huge net. By subjecting all facilities used to provide such services to the obligations of Section 251(c), the Commission ends up catching dolphins as well as tuna. True, “[f]or purposes of this item” the Commission limited the term “advanced services” to wireline technologies. But this limitation might be easily or inadvertently removed. LMDS systems are broadband, and they may rely on packet-switched-technology. Where the LMDS licensee is an incumbent rural telephone company, will the Commission attempt to subject wireless local loops to burdensome regulation and unbundling? Such a prospect will dramatically curtail investment in fixed wireless systems.

⁷ *MO&O* ¶ 3 (emphasis added) (footnote omitted).

B. The *NPRM*'s Separate Affiliate "Alternative" is No "Alternative" for Rural Telephone Companies.

In the *NPRM*, the FCC proposes an "alternative pathway" by which ILECs may provide advanced services free from the obligations of §251(c) of the Act if the ILEC provides service through a separate affiliate subject to seven proposed structural separation and non-discrimination requirements.⁸ Unfortunately, it will be almost impossible for rural telephone companies and their affiliates to meet the proposed separation requirements.⁹ Accordingly, the proposed rules will provide no relief for rural telephone companies and will discourage them from investing in either wireless or wireline systems capable of providing advanced services.

The following are but two examples of the unworkable nature of the Commission's proposal as applied to rural telephone companies. Pursuant to the *NPRM*, in order to qualify as a separate advanced services affiliate, such affiliate and the rural telephone company must have separate officers, directors and employees.¹⁰ In addition, an advanced services affiliate must not obtain credit under any arrangement that would permit a creditor to have recourse against the assets of the rural telephone company.¹¹ Both of these requirements undermine the ability of rural telephone companies to deploy advanced services, and accordingly, rural telephone companies will not be able to satisfy these requirements.

⁸ *NPRM* ¶ 96

⁹ Section 251(f) of the Act, which provides for an exemption from § 251(c) obligations for certain rural telephone companies, provides rural telephone companies with illusory protection. Exemptions are subject to termination by state utility commissions, and in almost every instance in which an exemption has been challenged, the exemption has been terminated. Accordingly, the rural exemption provides rural telephone companies with little incentive to invest in advanced services.

¹⁰ *NPRM* ¶ 96.

¹¹ *Id.*

With respect to separate personnel, rural telephone companies lack the economies of scale necessary to support separate employees. It simply does not make sense to hire a staff of five or six people simply to provide xDSL service to a hundred customers. In addition, rural communities have a limited talent pool of individuals from which to draw, and the proposed requirement undermines a rural telephone company's ability to take advantage of its personnel's expertise in providing telecommunications service to difficult to serve remote rural areas.

With respect to the limitation on obtaining credit, this proposal if adopted, would nearly eliminate the ability of rural telephone companies to obtain financing to invest in advanced services infrastructure. Without the ability to leverage their existing infrastructure, rural telephone companies will not be able to invest in advanced services.

As these examples demonstrate, the Commission's separate affiliate proposal provides rural telephone companies no viable alternative under which to deploy advanced services. Either they deploy facilities subject to Section 251(c), or they deploy no advanced facilities at all. This will discourage rural telephone companies from investing in advanced services, contrary to the clear directive of Section 706.

III. CONCLUSION

The Commission has before it a unique opportunity to set the course for the future deployment of advanced services. The outcome of this proceeding will affect both the deployment of wireline and wireless systems. Accordingly, the Commission must carefully consider the path on which it embarks and choose a course of de-regulation. In order to encourage the deployment of advanced services to rural areas as mandated by Section 706, the Commission should allow rural telecommunications companies to continue to deploy advanced

services, using both wireline and wireless technologies, in the least burdensome regulatory environment possible.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP

By: _____

Caressa D. Bennet
Gregory W. Whiteaker

Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
(202) 530-9800

Dated: September 25, 1998

U:\Docs2\RTG\Comments & Exparte\706NPRMc8.225gw.wpd